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WHATCOM COUNTY COUNCIL
Special County Council

April 19, 2005

Council Chair Laurie Caskey-Schreiber called the meeting to order at 10:00 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner
Dan McShane
Seth Fleetwood
Sharon Roy
L. Ward Nelson

Absent:

Sam Crawford

1. COUNCIL TO DISCUSS ISSUES AND CONCERNS RELATED TO THE RECENTLY ADOPTED BUILDING AND SUBDIVISION MORATORIUM IN THE LAKE WHATCOM WATERSHED (ITEMS TO BE DISCUSSED INCLUDE: PROCESS, JUSTIFICATION FOR LIFTING THE MORATORIUM, BENCHMARKS, AND PRIORITIZATION OF TASKS) (AB2005-072)

Caskey-Schreiber stated Dr. Robin Matthews said there was new evidence that some of the low impact development (LID) standards don't work in this climate and with this soil.

Amy Pederson, Planner II, stated many of the LID practices she listed in her memo are very site specific. The County couldn't require each and every one. They have to be site-specific.

Roy stated start with the principal that they want as little moisture and water leaving the site as possible, then evaluate options on that criteria. Some of the soil conditions would come into play.

Nelson stated LID standards should be site specific. Dr. Matthews' ideas and options should be reviewed in addition to staff's options.

Brenner stated she contacted local experts on green building and Leadership in Energy and Environmental Design (LEED) building techniques that are tailored to the local area. The Council should send them a letter to invite them to make a presentation at a future meeting when they have time.

McShane stated this ordinance goes a long way toward LID as it is. To go further would have to be site specific. The only other approach to take would be a

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1 technical advisory committee approach to review individual building permits in the
2 watershed. That is programmatic versus regulatory.
3

4 The goal is phosphorus reduction, which may be different from other LID
5 approaches. Borrowing ideas from other areas will be more challenging. There is
6 work going on in the Lake Sammamish area, but they're no further ahead than
7 Lake Whatcom. He would like ideas on programmatic options. Pederson stated the
8 concept of site-fingerprinting is clearing just the amount of area necessary to do
9 construction is something else that is on the list and is not necessarily site specific.
10 There are other regulations on top of that. They have to weigh all the options.
11 Post construction soil amendment is a way to make sure soils onsite retain runoff.
12

13 Brenner asked if the ordinance could require that a permit be signed off by a
14 LEED-certified local consultant. She asked if Ms. Pederson has talked to the local
15 LEED experts. Pederson stated she has not. Other County staff would have had
16 contact with those experts.
17

18 Brenner stated the LEED experts are expert at the local level. She wouldn't
19 feel comfortable with someone from another area, only someone local.
20

21 McShane stated LEED is not something they would be looking at. LEED is
22 much broader and for energy efficiency. The Council wants to reduce stormwater
23 flows and treat phosphorus loading. There may be other local consultants to
24 contact. Some of this stuff is new, and the success is in how well the measures are
25 maintained. Consultants don't necessarily have to be from Whatcom County.
26 Snohomish County and King County are similar. Get someone from the Puget
27 Sound region. Fold the idea into a programmatic approach. Tie it into a
28 stormwater district that the Council will have to consider in the future.
29

30 Nelson stated the object is to reduce phosphorus loading. He asked if they
31 attack the disease from the environment or the cause. In terms of the
32 environment, look at the house or the flows.
33

34 Bruce Roll, Assistant Director, stated his goal is to mitigate sources to the
35 maximum extent possible, knowing they won't get everything and will have to
36 mitigate elsewhere. Staff has tried to develop site specific strategies, including
37 education. Source is one of the top priorities, followed by interception and
38 treatment. Interception and treatment for phosphorus is a very costly endeavor
39 that requires quite a bit of land. Also, the ability to reduce levels when they are
40 already relatively low is an issue. Most systems are designed to do a good job with
41 high levels, but not low levels. A house is one source. There are also roads and
42 other impervious surfaces to deal with. There are strategies to deal with the
43 sources. In Lake Whatcom, it's difficult to have 100 percent infiltration from a
44 single spot.
45

46 Nelson stated his concern is with what already exists and is a contributing
47 factor. To identify a contributing factor, there must be decent analysis to know if

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1 there is quite a bit of phosphorus during storm events. He asked if they have that
2 information. Roll stated they are getting more information all the time from
3 different monitoring programs. A lot of the systems are not designed for storm
4 events. A best management practice (BMP) in a residential area isn't necessarily
5 designed to deal with the first large storm after it's been dry for awhile. That's
6 where the issue comes up about the curve of reduction over an entire year. There
7 will be a volume of water that they can't treat with that BMP.

8
9 Nelson stated the runoff is associated more with impervious surfaces. He
10 asked if they are picking up anything in the rural areas. Roll stated they are
11 picking up things from drainage systems and roads. Those areas are drained
12 historically by small streams, and are being constricted into manmade conveyance
13 mechanisms.

14
15 Nelson stated there was a recent big storm event. On a lot of five- or ten-
16 acre lots, water or a stream will come down into natural wet bog areas that fill up
17 during the wet season. Those are natural mechanisms for drainage. He asked if
18 there is an analysis of how well those bog areas are working on phosphorus or
19 other contaminants. Roll stated they don't have that analysis yet. They're getting
20 there. They're mapping the system to find out the volumes of water from the
21 whole drainage area and where they come from. That will lead into the options to
22 treat the water.

23
24 Staff has been working with the City of Bellingham to find out how they
25 estimate reduction in their filter system. The City is looking at a cost of \$100,000
26 to treat one cfs of water. That's a lot of money.

27
28 Caskey-Schreiber stated Dr. Matthews said that they have to make sure any
29 system doesn't increase the phosphorus. That might happen when the wrong LID
30 is applied. Roll stated he agreed. There are good technologies, but they must be
31 monitored for the next ten to 15 years to make sure they work.

32
33 Brenner asked if they are going to get quite a bit of that information as part
34 of the total maximum daily load (TMDL) study. Roll stated they won't.

35
36 Caskey-Schreiber asked what information they can expect from the TMDL
37 study.

38
39 Brenner asked if the Department of Ecology (Ecology) will look at the
40 different tributaries to determine the loading from those tributaries.

41
42 Steve Hood, State Department of Ecology, stated Ecology will look at areas
43 and tributaries that have high concentration of phosphorus contribution. Early on,
44 Ecology agreed to work in the watershed planning process and look at land cover as
45 a measure of pollution sources. Ecology will calibrate the water quality in the
46 stream to the land cover in the watershed, and then assign pollutant loads that
47 generated the phosphorus in the water, back to the land covers that came there. If

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1 the land use is forestry, Ecology will have to say the forestry is generating the same
2 level of pollution wherever forestry is occurring. The same will be said with
3 residential development. However, Sudden Valley residential use may be handled
4 differently because Sudden Valley handles its stormwater differently. Ecology will
5 apportion a certain amount to residential development and apportion a different
6 amount to forestry. Ecology will figure the differing amounts based on sampling.
7

8 Nelson asked if residential use on 20 acres would be apportioned forestry or
9 residential. Hood stated Ecology is using land cover data based on 1992, but that
10 was not a year Ecology collected data. Utah State University (USU) updated that
11 coverage for classification. It is not a parcel-by-parcel view of the world. It is a
12 satellite view of the world. Each pixel on the satellite view would be classified as
13 residential, forestry, or grasslands.
14

15 They are looking at the water to do that analysis. There is a scale of highly
16 developed to low developed areas, and they will see which will change over time.
17 Ecology is using the water data to calibrate the amount of pollution the different
18 land uses are generating.
19

20 Brenner asked if Ecology is specifically testing different tributaries to find out
21 the loading into the lake. Hood stated each basin was tested as near to the mouth
22 of the lake as possible.
23

24 Brenner asked the percentage of the tributaries that Ecology has that
25 information on. Hood stated Ecology has close to half of the watershed drains past
26 one of the sampling areas. Sampling is on all of the streams that run all year long,
27 except one. It's all the major streams.
28

29 Roy asked if the County is measuring farther upstream. Roll stated the
30 County coordinates with Ecology, Water District 10, the City, and other agencies.
31 They've been actively pursuing gauging and collecting water quality data on the
32 major tributaries for three or four years. They collect data where the tributary
33 enters the lake to get an estimate of the amount coming in from one of those 12
34 drainages that enter into Lake Whatcom. As they put prescriptions in those
35 drainages, they can measure progress. Tools are designed to measure the load
36 coming into the lake. A suite of BMP's will fit into the model to estimate load
37 reductions. The goal was to go through all the drainages to come up with load
38 estimates and individual prescriptions for those drainages. Many of the sources are
39 diffuse, so it's difficult to pinpoint one source. Overtime, they hope to see
40 reductions or an overall decrease as more BMP's are in place. Staff will go through
41 that exercise this year. They have done some preliminary work. They must
42 coordinate with Ecology. The County is trying to get as detailed information as
43 possible on loading. The key is to coordinate carefully. Outputs must present
44 consistent messages to the public. They don't want different load estimates coming
45 from different modeling sets.
46

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1 Nelson asked if there is accurate information on seasonal creeks, streams,
2 and ditches, and their impact on volume and quantity, compared to non-seasonal
3 creeks. Hood stated USU is working on models that generate flow and
4 concentration. For those creeks that aren't gauged, they will use the gauged
5 stream to calibrate the model and test the streams.

6
7 Roll stated water resource inventory area (WRIA) project modeling will have
8 clear assumptions of outputs and the variability that might exist. Ecology is using a
9 different approach.

10
11 Hood stated having nine gauges gives better than average calibration data
12 for both models. Both WRIA and Ecology are using the same data sources.

13
14 Nelson asked if they are using a combination of field data and modeling data.
15 When they combine the data, they will have a better picture overall. Hood stated
16 field data makes sure the modeling data is correct.

17
18 Roll stated one issue is lake response to load. There is a lot of information,
19 including Dr. Matthews' work, on lake response. Only recently have they begun
20 studying lake volumes and concentrations. They don't have the data sets yet on
21 volumes and concentrations, but they're getting that data. They will need to
22 continue gathering that information for the next decade. There must be gauging
23 stations in areas where they want to put practices in place. They will not be able to
24 hone in on every drainage to a great level of detail.

25
26 Hood stated many of the data are episodic. They must take a long-term view
27 of things.

28
29 Fleetwood asked the timeframe when the County must implement a response
30 to the TMDL study. Hood stated there is a ramp-up period. The final deadline is
31 when they deal with the County's permitted stormwater discharges. If there is no
32 change in the non-point source pollution, then they will have to reduce the
33 permitted sources. The timeframe is about five years before the County needs to
34 start doing something. The TMDL implementation plan needs to ask if there is
35 reasonable assurance that the non-point reductions will be achieved. If those are
36 made, then they can allocate waste loads. Optimally, both non-point and point
37 sources will be treated the same. The County must do enough to be reasonably
38 assured it can make the same waste load allocation, regardless of where the land
39 sits, and that the non-point sources will be reduced.

40
41 If the County doesn't do anything, the waste load allocations will become a
42 permit requirement. The amount of pollution allowed to discharge is called the
43 waste load allocation. A stormwater permit allows a certain amount of phosphorus
44 per year. The permit will be written before that waste load is established. After the
45 permit, the TMDL will establish the necessary reductions. The permit always has
46 language that says Ecology has a right to modify the permit before it expires.
47 Ecology doesn't have to modify the permit, but it can. Generally, Ecology sets

1 reasonable goals that move them in the right direction. As long as the County is
2 meeting the goals, Ecology won't need to modify the permit.
3

4 Brenner asked if the overall reduction is in the watershed, not tributary-by-
5 tributary, source-by-source, or area-by-area. Hood stated Ecology will examine
6 each basin individually. Each basin would be considered a source. Under the
7 permit, some of the source would be covered by the permit and some would be
8 non-point source. Break out the part that is within the permit, and then take out
9 the part not in the permit. When they incorporate it into the permit, it's likely
10 they'll take data from basins and put them into one big package for the permit.
11 Each permit has looked at each individual outfall, but it is not an appropriate way to
12 deal with stormwater. There are many outfalls that should be considered in a more
13 aggregate way. The outfalls are diffuse and episodic. When they add them all
14 together, they get a much better picture of what is going on.
15

16 Brenner stated there has been discussion of doing different requirements for
17 different areas of the watershed. She asked if Ecology will, in the end, look at the
18 total picture, not necessarily individual areas. She's concerned that some parts of
19 the watershed may not get better while other parts of the watershed may show
20 improvement trends. Hood stated modeling would be drainage-by-drainage views
21 that are added together in the end. If the County is taking an approach to do
22 things differently in different basins, that's appropriate.
23

24 Hopefully, the TMDL approach will determine if a pound of phosphorus in one
25 place is the same as a pound of phosphorus in another place. That information will
26 hopefully inform them on where they want to focus or how well they can solve the
27 problem.
28

29 Caskey-Schreiber stated that a year ago, Mr. Hood said that whatever they
30 do know will make the TMDL prescription less painful. That's what these revisions
31 and the moratorium are all about. The Council is trying to minimize what the
32 County will have to do in the long run. She asked how Ecology is going to assess
33 the data without logging having occurred in the Sudden Valley area.
34

35 *(Clerk's Note: End of tape one, side A.)*
36

37 Hood stated the single biggest source of phosphorus from the State
38 Department of Natural Resources (DNR) is not logging, but it's roads. Part of the
39 plan accelerates repair of the roads. He would not be surprised if, when DNR
40 implements a plan, they will see a reduction of phosphorus. The road going up
41 Lookout Mountain is a constant, chronic source of phosphorus and surface erosion.
42 Because the DNR plan requires an aggressive road maintenance and abandonment
43 plan, they will see a phosphorus reduction. When scientists who work on lakes
44 looked at Lake Whatcom, they liked seeing all the background that can be used to
45 develop the model. They can't get a situation where there is a better estimate of
46 the background. The scientists will consider the background.
47

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1 Scientists consider the background. The DNR will reduce impacts, but
2 Ecology couldn't get a better estimate. DNR landscape plan will reduce that
3 amount. The DNR Landscape Plan will reduce an amount above the background.
4

5 Caskey-Schreiber stated the Council is going to have to address fixes
6 drainage-by-drainage. She asked about jurisdiction-by-jurisdiction. She asked if
7 the City will work on its own set of solutions or if the County must coordinate with
8 the City. She asked if Ecology will spell out who is responsible for what. Hood
9 stated the City and County would have their own permits for the point sources.
10 Federal regulations doesn't require separation of non-point sources. They do
11 require reasonable assurance that the non-point sources will be reduced. In that
12 sense, the County and City have to take care of their own non-point sources. To
13 make that evaluation, they almost have to separate the sources. Similarly, the
14 County and City don't have control of forestlands. DNR has control over
15 forestlands. Since forestlands are so close to background, they will be considered
16 background. There will probably be at least three pieces of the non-point sources.
17

18 Fleetwood asked if logging will not have an appreciable negative impact when
19 logging resumes in the watershed.
20

21 McShane stated Mr. Hood was instrumental in the adoption and crafting of
22 the logging plan.
23

24 Hood stated he worked as a forest engineer for many years. He had many
25 opportunities to do things both right and wrong. When he came to this job, his
26 view of what happens in forestry changed quite a bit. When he started responding
27 to complaints about forest issues and development issues, he saw that mediocre
28 and bad forestry is better than mediocre and bad development. They can't recover
29 from development, even good development. In forestry, they don't remove the
30 topsoil. Therefore, they don't see a change in runoff that they do with
31 development, even with detention. There is some increase in runoff, but it's for a
32 short time and not as severe as with development. It's dramatic to see all the trees
33 removed, but the topsoil can still hold water. When housing is put in, development
34 also removes vegetation and a significant amount of absorption capacity that
35 doesn't recover. Forestry has an impact, but not as severe as when they
36 permanently change the land cover.
37

38 McShane referenced Whatcom County Code (WCC) 20.71.401. At the last
39 meeting, he had an idea to give people an opportunity of reducing impervious
40 surface areas by reducing setbacks. However, he realized it might be better to
41 leave this language alone and not change the setbacks. They don't gain anything in
42 terms of impervious surfaces. In order to provide safety and visibility, the change
43 doesn't make a lot of sense. Leave the language as it is currently.
44

45 Roy asked if the existing language also addresses the issues related to the
46 fire department access.
47

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1 McShane stated that is a different issue. It has already been taken care of.

2
3 Roy stated the letter from the fire marshal was not as negative as portrayed
4 in the newspaper.

5
6 **McShane moved** to leave the setbacks at 30 feet and 20 feet in WCC
7 20.71.401.

8
9 Pederson stated there was an suggestion of having a minimum setback.

10
11 **McShane amended his motion** to amend WCC 20.71.401, "...have a
12 **minimum** setback of ~~20~~ **30** feet; ...have a **minimum** setback of ~~40~~ **20** feet; ..."

13
14 Brenner stated the letter from the fire marshal said these smaller setbacks
15 would work in some areas. One can use grass and other materials instead of
16 impervious asphalt. Since they're only saying these are minimum setbacks, leave
17 setbacks at 20 and 10 feet.

18
19 Pederson stated the email from the fire marshal did not pertain to this
20 setback section. It had to do with the 500 square foot limitation on lawn.

21
22 Brenner stated the Council received a letter from someone who was
23 concerned about this change, but the change would work in some instances.
24 Because it would work in some instances, leave those amounts as the minimum
25 setbacks. Pederson stated the setback is from the road right-of-way.

26
27 Roger McCarthy, Development Engineer, stated the real concern is with site
28 distance. Someone could back out next to a building ten feet from the right-of-
29 way. A long car could be out over the sidewalk before being able to see around the
30 building. Also, there is a concern with the right-of-way not being out to the
31 standard 60 feet, but is smaller. There would not be enough space in the future for
32 widening the road.

33
34 Brenner stated this is a minimum amount, not the only amount. The County
35 would be able to determine those needs on a case-by-case basis. McCarthy stated
36 the building plan reviewer would have to review each case. Now, the staff just
37 applies the 20 and 30 feet, and does not look at each case.

38
39 McShane stated the question is whether the County would gain anything
40 from the change. If the County gains anything, it will be a rare exception. Go back
41 to the original language in the code for safety vehicles. Moving the house forward
42 toward the road will not change the amount of impervious surfaces. He'd hoped
43 that it would give people a break on the amount of driveway, but now he
44 understands that the distance is pretty tight already. It could be a logistical hassle.

45
46 Brenner stated that when the circumstance allows this minimum, it would be
47 nice to have this option.

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1
2 ***Motion carried 4-1 with Brenner opposed and Nelson out of the room.***
3

4 McShane referenced WCC 20.80.636. After a conversation with Mr.
5 Baumgarten, he decided he doesn't want to require onsite infiltration as defined by
6 Whatcom County. It is onerous and impractical. He asked about requiring onsite
7 dispersal or infiltration.
8

9 Kurt Baumgarten, Planner I, stated the County requires onsite dispersal or
10 infiltration through the development standards. Most residences must do
11 dispersion if it meets the setbacks, which are 25 feet from the property line. Most
12 lots in the urban residential, three units per acre (UR-3) zone have sufficient space
13 to meet the setbacks, except lots in Sudden Valley that have an engineered
14 drainage plan. The majority of stormwater from development is disbursed. He
15 recommends that section not be amended.
16

17 Since the Council has looked at WCC 20.71 and WCC 20.80, it should also
18 look at WCC 20.80.735. The Council can take new information from the critical
19 areas ordinance regarding mitigation to come up with a much better section that is
20 more prescriptive. People may want to actually restore some canopy cover. That is
21 discussed in the terms of native vegetation, which seems appropriate. Be more
22 prescriptive in terms of spacing, species, composition, and amending soils. This
23 section could refer back to an enhanced WCC 20.80.735.
24

25 Fleetwood asked if the Council should not include this language now or keep
26 this language and modify or rescind the language when they get better information.
27 Baumgarten stated he was under the impression this is a working document that is
28 not ready for Council action. Keep it as a placeholder. Instead of using the
29 landscape requirements from WCC 20.80.325, use the new and improved WCC
30 20.80.735, which is yet to be developed. Now that people have done some
31 replanting, it could be more effective with better language. If he follows the same
32 methodology the Council has been using to review changes, it wouldn't take that
33 much time. He would take the intent and add more specific language that is
34 consistent with what someone might go through when doing a mitigation plan
35 through the critical areas ordinance. There would be more consistency for the
36 public. There would be less of a discretion for staff. It would be more prescriptive
37 and better public policy. Wetland and critical areas specialists use a similar set of
38 guidelines for replanting. Be more specific on certain items.
39

40 McShane stated his intent was to get away from that landscape code.
41 Baumgarten stated getting rid of that code is appropriate and consistent in the
42 overlay.
43

44 Brenner stated someone from staff said that non-native invasive species may
45 be the only thing holding the soil together, and it might not be a good idea to get
46 rid of those species. She asked if there would be mention about it in the language.
47

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1 Caskey-Schreiber asked Mr. Baumgarten to come forward with a
2 recommendation. Baumgarten stated the Council looked at the overlay and
3 stormwater special district, but there hasn't been anything regarding the special
4 management area. The Council's intent was to go through that area again. Given
5 staff's workload, staff would like to work from the Council's recommendations and
6 add an area where it sees some enhancements. He is not comfortable going
7 through all of WCC 20.80.735 to find everything. He's only referring to
8 20.71.301(3). Most of that language seems fine. It won't take too much change
9 other than changing the code references to add more prescriptions for areas that
10 are over-cleared.

11
12 Brenner stated it seems like the Council needs to make a statement about
13 the intention of nonnative invasive species, such as English Ivy, when soils are
14 unstable. Baumgarten stated a restoration planting plan would have to include the
15 appropriate mulch onsite. He would never encouraging leaving nonnative invasive
16 species.

17
18 Now, there is a fair amount of interpretation by staff regarding replanting
19 plans. More prescriptive regulations would provide better guidance for staff and
20 people who use that section. They can do that without much pain.

21
22 Brenner stated she doesn't like leaving nonnative invasive species, but she
23 heard it might be better to do that. Baumgarten stated nonnative invasive species
24 are better than bare, open ground on a slope, but they shouldn't be left in lieu of
25 native replanting. He will cover that issue.

26
27 Caskey-Schreiber asked for ideas of ideal prescriptions. Baumgarten stated
28 that if this applies to subdivisions, a short-plat with an open space reserve area will
29 have to be retrofit. The project will be sent to someone on an approved list of
30 specialists that already work off a certain protocol. It would be remiss to throw
31 them yet another set of standards. Instead, look at what they're doing now, and
32 do something that matches as best as possible to maintain consistency in
33 monitoring and the built environment. Also, developers will have reasonable
34 assurance of consistent requirements.

35
36 Caskey-Schreiber asked Mr. Baumgarten to provide suggested language.

37
38 McShane stated the Council also needs to discuss transfers of development
39 rights (TDR's) in the watershed to get an idea about how aggressive the County
40 should or should not be with that program.

41
42 Nelson stated the open space/open space tax designation is a way to
43 preserve lands for natural reasons. He asked how to get the natural places that
44 already exist to be a better quality. Taxation may be a way to get people to look at
45 their properties and evaluate if they have proper drainage, forestry plans, and other
46 things to apply for open space/open space tax designation. The Council may want

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1 to allow open space/open space tax designations for parcels smaller than five acres
2 within the watershed. He asked if the Council is interested in that option.

3
4 The Council concurred.

5
6 Hal Hart, Planning Director, asked if the request is to evaluate how open
7 space/open space tax designation is being used in the watershed.

8
9 Nelson stated the Council could go to the open space/open space ordinance
10 to change the criteria.

11
12 Kraig Olason, Senior Planner, stated King County has done quite a bit with
13 that idea. The staff can look into King County's program.

14
15 Nelson stated that when they restrict property development in Lake
16 Whatcom, property values will go up. People may be interested in finding less
17 costly ways to improve their lands. He will pursue this idea.

18
19 Brenner asked when the Council will have an opportunity to talk about other
20 issues besides this ordinance.

21
22 Caskey-Schreiber stated the Council is getting to that point. The Council has
23 done everything it can to change the water protection development standards. It's
24 moving into the next phase. The Council can transition to other ideas during the
25 next meeting.

26
27 McShane stated the Council should consider possible incentives in the
28 stormwater district. There are also incentives within a particular district. One
29 would be charged less for contributing fewer impacts. That is going to have to be a
30 key component to get onsite retrofitting to happen.

31
32 *(Clerk's Note: End of tape one, side B.)*

33
34 Brenner asked the estimated cost of moving the intake into basin three. Roll
35 stated he's not an engineer. Past jurisdictions where he worked estimated the cost
36 to be a couple million to move an intake 40 feet. The cost depends on access to
37 develop the extension. It is an option that should be fully explored against the
38 backdrop of all options. There would be advantages to moving the intake. The City
39 of Bellingham would make that decision.

40
41 Caskey-Schreiber stated the County needs to have that discussion. The
42 problem is the City's burden, not the County's burden. The County should support
43 the City, but the City will have to take the lead.

44
45 McShane stated that from a fiscal perspective, concentrate on the financial
46 responsibility the County will have to take in terms of stormwater. The County still
47 has to meet the TMDL goal, no matter where the intake is located.

1
2 Roll stated one part of federal regulations is the response to the TMDL study.
3 Another part of the federal regulations is stormwater. They aren't the same
4 requirements. The geographic areas are different. The stormwater regulations
5 apply to only a small portion of the watershed. Staff always has thought in terms
6 of applying stormwater to both areas when it makes sense. It gets interesting
7 when there is an attempt to coordinate the load allocations for the entire watershed
8 with geographic areas based on contiguous consensus units rather than drainages.
9 Now, the final permit for stormwater will not be issued until 2006. That means the
10 TMDL will be out the end of 2006 or in 2007.

11
12 Hood stated the dates aren't certain. The schedule for the final permit is a
13 little over a year. A preliminary draft will be out May 15. There will be a three
14 month comment period. The unknown is the amount of time dedicated to the
15 comment period to develop the draft permit, which will have another two month
16 comment period. The TMDL is a technical report that will go to the Environmental
17 Protection Agency (EPA). The current forecast is the final permit will be due by the
18 Spring of 2006.

19
20 Fleetwood asked if the TMDL study is synonymous with the technical report
21 referred to. Hood stated it is.

22
23 Brenner stated it would be up to the City of Bellingham to decide to move the
24 intake. She asked if anyone from the City has done that kind of research. Hood
25 stated Jeff Smith would be the best person to ask.

26
27 Roll stated the City has said it has looked at the option. If there is a report
28 about it, he will bring it to the Council.

29
30 Caskey-Schreiber stated the City of Bellingham Source Water Treatment
31 Trends report is a summary of options the City explored. The City determined that
32 it is costly to move the intake and costly to upgrade the filtration system. Keep in
33 mind that the City must figure out what it wants to do to address its problems.

34
35 Roll stated knowing where the City will go will help the County in its
36 management options for the drainages in the County's jurisdiction.

37
38 Nelson referenced the last Council meeting about lake circulators. He asked
39 if they talked about whether the circulators would create oxygen to maintain fish
40 habitat.

41
42 Caskey-Schreiber stated the Council discussed it extensively during the
43 presentation. The question is who would pay for the system, and if it's the
44 County's responsibility. The City said it explored that option and decided it's too
45 expensive.

46

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1 Nelson asked how much of basins one and two are the County's jurisdiction.
2 Roll stated part of basin one and all of basin two are in the County's jurisdiction.
3

4 Nelson stated he would like to see that option explored.
5

6 Caskey-Schreiber stated there is some risk to the option. If not done
7 correctly, it can have the adverse affect of mixing the sediments and phosphorus at
8 the level where the marine life is.
9

10 Brenner stated the City never explored the option of lake circulators, only
11 lake aerators. There is a difference between the two. The aerator would have that
12 risk.
13

14 There were some inaccuracies in a newspaper article. She doesn't remember
15 Ms. Markiewicz saying the lake is fully oxygenated. Oxygenation of lake is
16 important because it's on the 303(d) listing for depleted oxygen. Phosphorus
17 loading is the most important thing to address. Also, they can't ignore
18 oxygenation. Both aerators and circulators oxygenate, but differently.
19

20 Caskey-Schreiber stated Dr. Matthews said the only thing that would work in
21 that system is a hypolimnetic aeration system that keeps the layers stratified. They
22 are very expensive and costly to run. One is needed for every 50 acres, and costs
23 \$40,000 each, not including maintenance. The question is who will have to bear
24 the cost of the solutions. They have yet to determine that.
25

26 McShane stated the presentation was interesting. The SolarBee would not be
27 effective for Lake Whatcom, but it does a good job of killing blue-green algae by
28 disrupting their habits. There may be other lakes in Whatcom County where this
29 would be really useful. So far, blue-green algae isn't a big problem. SolarBees
30 could be used as a preventative measure, but would not improve oxygenation. He
31 hopes they don't get to a point where they have to use something like that.
32

33 Brenner stated she contacted lake experts from Washington State University
34 who are interested in doing a workshop or presentation this summer for the
35 Council. She's exploring ideas, such as the SolarBee idea. These other people
36 know about lots of options to oxygenate the lake. They wouldn't promote a
37 particular option.
38

39 Pederson asked whether the Council made the recommendation to strike
40 agriculture.
41

42 Caskey-Schreiber stated she wanted to find out if they can include language
43 about small activities going through an application process, but not a conditional
44 use permit. Pederson stated staff talked about different approval processes.
45

46 Fleetwood stated there is not a suite of proposed ordinances related to
47 stricter building codes that ready for introduction. The moratorium ordinance is

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1 due to expire on May 1. He asked if the Council is going to discuss whether or not
2 it wants to maintain the moratorium.

3
4 Caskey-Schreiber stated Councilmember McShane introduced an ordinance to
5 continue the moratorium for subdivisions.

6
7 McShane stated it would require an emergency ordinance. The way the
8 moratorium ordinance was passed, there was a conflict within the moratorium. The
9 goal and date conflicted with each other, so therefore the Council didn't accomplish
10 the goals of the moratorium. He's not keen on putting forward another building
11 moratorium, but would support anyone who does.

12
13 Caskey-Schreiber stated seasonal land clearing will take the place of the
14 moratorium. Building application appointments are being scheduled now for mid-
15 October. By the time the seasonal land clearing ban kicks in, no one can do
16 anything. Many people will cancel their appointments when this moratorium lifts on
17 May 1.

18
19 Hart asked the Council to clarify its direction. Councilmember Fleetwood
20 asked staff to continue on with the stringent building code aspect, beyond what
21 they've looked at so far.

22
23 Fleetwood stated a list of LID proposals were presented, but are not in the
24 draft overlay district. The Council discussed the possibility of implementing some of
25 those LID proposals. The Council was supposed to have a ranking on the best LID
26 options, and from that they would draft a proposed ordinance.

27
28 Hart asked if the staff should still go forward, whether or not there is a
29 moratorium.

30
31 Fleetwood stated that is correct.

32
33 Baumgarten stated the seasonal clearing restriction only applies to permits
34 accepted after the ordinance became effective. There are several hundred permits
35 that came in before that ordinance was adopted. They will be allowed to go
36 through the point system. There may be two different standards applied to the
37 permits.

38
39 Caskey-Schreiber stated she agrees that it won't look like anything happened
40 in the watershed this fall. They are aware 250 permits got in under the wire.

41
42 McShane stated the vesting issue might be worth exploring with legal
43 guidance. There are other avenues to apply it to new building permits, if the legal
44 staff has courage.

45
46 Roy stated the Council should also talk about enforcement for the point
47 system that is in effect for some of those permits. She asked what the Council

